

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

TIMOTHY DURLEY,

Plaintiff,

v.

Case No. 22-CV-1127

CHERYL JEANPIERRE,

Defendant.

ORDER

On September 26, 2022, plaintiff Timothy Durley, who is incarcerated at Waupun Correctional Institution, filed a complaint under 42 U.S.C. § 1983. (ECF No. 1.) On January 27, 2023, Chief Judge Pamela Pepper allowed Durley to proceed *in forma pauperis* and screened his complaint. (ECF No. 17.) Durley was allowed to proceed on a retaliation claim under the First Amendment against the defendant.

On March 7, 2023, because all parties consented to magistrate jurisdiction, the case was reassigned to this court. (ECF No. 21.) On March 28, 2023, the defendant filed a motion to revoke Durley's *in forma pauperis* status and to stay the deadline to file an answer to the complaint. (ECF No. 23.) On May 2, 2023, the court granted the defendant's motion to revoke Durley's *in forma pauperis* status, finding that Durley had incurred three "strikes" under 28 U.S.C. § 1915(g) and, because his complaint did not indicate he was in imminent danger, he did not qualify for the exception to the three strike rule. (ECF No. 28.) Durley was informed that, if he wished to continue

with his case, he must pay the remaining \$400.31 balance of his filing fee by June 2, 2023.

On May 9, 2023, Durley filed a motion to amend the screening order and a motion to stay the payment of the filing fee pending resolution of his motion to amend the screening order. (ECF Nos. 29, 30.) In his brief in support of his motion Durley argues that his complaint shows that he was in imminent danger because the defendant allegedly withheld medication in June 2022. (ECF No. 31 at 3.) However, as the court explained in its order revoking Durley's *in forma pauperis* status, a plaintiff cannot rely on allegations of past harm to demonstrate that he is in imminent danger, and the threat must be a real emergency. (ECF No. 28 at 2-3.) Not having access to medication three months before filing his complaint is a past harm and not a present emergency.

As such, Durley's motion to amend the screening order is denied. Because the court has resolved his motion in a timely manner, the court also denies his motion to stay payment of the full filing fee. If Durley wishes to proceed with his case, he must pay the \$400.31 balance of the full filing fee by June 2, 2023.

IT IS THEREFORE ORDERED that Durley's motion to amend the screening order (ECF No. 30) is **DENIED**.

IT IS FURTHER ORDERED that Durley's motion to stay the deadline to pay the remainder of the full filing fee (ECF No. 29) is **DENIED**. Durley must pay the \$400.31 balance of the full filing fee by **June 2, 2023**. Failure to pay the fee by this deadline will result in the dismissal of his case without prejudice.

Dated at Milwaukee, Wisconsin this 17th day of May, 2023.

BY THE COURT

A handwritten signature in black ink that reads "William E. Duffin". The signature is written in a cursive style and is positioned above a solid horizontal line.

WILLIAM E. DUFFIN
United States Magistrate Judge